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6 IN THE COURT OF APPEALS
7 OF THE STATE OF WASHINGTON
8 DIVISION II

9 IN RE THE PERSONAL RESTRAINT
10 PETITION OF:

11 JOHN A. RICHARDSON III,

12 Petitioner.

NO. 48444-7-II

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

13
14 A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

- 15 1. Whether a Personal Restraint Petition (PRP) filed four years after the
16 judgement was final is timely?
17
18 2. Whether the Court should consider an issue that was previously raised in
19 the direct appeal?
20
21 3. Must the petition be dismissed where the petitioner cannot show actual
22 prejudice to a constitutional right or a fundamental defect resulting in a
23 miscarriage of justice?
24
25 4. Whether the State adduced *prima facie* evidence of the crime, sufficient for
the trial court to admit the defendant's confessions?

1 B. STATUS OF PETITIONER:

2 Petitioner, John Richardson, is restrained pursuant to a Judgment and Sentence
3 entered in Pierce County Cause No. 08-1-01644-9. Appendix A.

4 The petitioner was sentenced January 15, 2010. On July 20, 2010, the petitioner
5 filed a "Motion to Modify and Correct" the judgment¹. Appendix D. This was his first
6 collateral attack. *See* RCW 10.73.090(2). Then, the petitioner filed a direct appeal. He
7 challenged the sufficiency of the evidence. *See State v. Richardson*, #40249-1-II, noted at
8 162 Wn. App 1022 (2011 WL 2419466). Appendix B. The conviction was affirmed. *Id.*
9 The Mandate issued on December 1, 2011. *Id.*

10 The petitioner filed his second collateral attack, a PRP, #43135-1-II. Appendix C. It
11 was dismissed on the merits. *Id.*

12 On December 9, 2015, the petitioner filed the present PRP in the Supreme Court,
13 through his attorney. The Supreme Court transferred the case to the Court of Appeals
14 under RAP 16.5.

15 C. ARGUMENT:

16 1. THIS PETITION IS UNTIMELY.

17 A PRP or other collateral attack must be filed within one year from the date that the
18 judgment becomes final, unless the judgment and sentence is invalid on its face, the trial
19 court lacked competent jurisdiction, or the petition falls under an enumerated exception.
20 *See* RCW 10.73.090(1). The judgement is final at the time the Mandate is filed terminating
21 a direct appeal. RCW 10.73.090(3)(b).

22 There are exceptions to the time bar. Among them is a challenge to the sufficiency
23 of the evidence, which the petitioner asserts. RCW 10.73.100(4). However, the petitioner
24 has already challenged the sufficiency of the evidence in his direct appeal. This Court
25

¹ The record does not reflect a ruling on this motion.

1 made an adverse ruling, affirming his conviction. See *Richardson*, *supra*. Also, a challenge
2 to the *corpus delicti* for admission of a confession is neither a constitutional issue in itself,
3 nor a challenge to sufficiency of the evidence on constitutional grounds. See *State v. Dow*,
4 168 Wn.2d 243, 249, 227 P.3d 1278 (2010).

5 Because the *corpus delicti* rule is a judicially created rule for the purpose of
6 determining the admissibility of evidence, an objection must be made in the trial court in
7 order to preserve the issue for appeal.

8 This judgment was final with the filing of the Mandate on December 1, 2011.
9 Where the current PRP was filed December 5, 2015, more than four years later, it is
10 untimely.

11 2. THIS PETITION IS SUCCESSIVE.

12 Under RCW 10.73.140 and RAP 16.4(d), a defendant is limited to one PRP or
13 collateral attack, unless he can show good cause. See *In re Personal Restraint of Becker*,
14 143 Wn. 2d 491, 20 P. 3d 409 (2001). A petitioner cannot simply revise an argument and
15 claim that it is “new” or good cause to hear it. See *In re Personal Restraint of Jefferies*,
16 114 Wn. 2d 485, 488, 789 P. 2d 731 (1990). Changing factual allegations, or making the
17 same legal arguments couched in different language, does not alter the fact that the issues
18 have been previously heard, and the petition is, therefore subject to being dismissed as
19 successive. *Id.*

20 Here, the petitioner has filed two prior collateral attacks. He acknowledges that the
21 present PRP is successive. Pet. at 5. That is why he filed it in the Supreme Court. While
22 the Supreme Court is not limited by RCW 10.73.140 and RAP 16.4(d), this Court is.
23 Therefore, this PRP must be dismissed.

1
2 3. THIS PETITION RAISES AN ISSUE PREVIOUSLY RAISED AND
3 RULED UPON IN THE DIRECT APPEAL.

4 As a general rule, "collateral attack by [personal restraint petition] on a criminal
5 conviction and sentence should not simply be a reiteration of issues finally resolved at trial
6 and direct review, but rather should raise new points of fact and law that were not or could
7 not have been raised in the principal action, to the prejudice of the defendant." *In re*
8 *Personal Restraint of Gentry*, 137 Wn.2d 378, 388-389, 972 P.2d 1250 (1999). The
9 petitioner in a PRP is prohibited from renewing an issue that was raised and rejected on
10 direct appeal unless the interests of justice require relitigation of that issue. *In re Personal*
11 *Restraint of Lord*, 123 Wn.2d 296, 303, 868 P.2d 835 (1994); *see also Gentry*, at 388.
12 The interests of justice are served by reexamining an issue if there has been an intervening
13 change in the law or some other justification for having failed to raise a crucial point or
14 argument in the prior application. *In re Personal Restraint of Stenson*, 142 Wn.2d 710,
15 720, 16 P.3d 1 (2001).

16 The petitioner's argument is based upon evidence and a determination in the trial
17 court. He alleges no new evidence, or an intervening change in the law that would justify
18 the fact that he did not raise this issue in the trial court² or challenge it in his direct appeal.
19 He essentially raises an issue that was previously rejected in the Court of Appeals where
20 the State had a higher burden of persuasion. Now, he has the burden to show by a
21 preponderance that the State failed to meet the lowest burden of proof in the context of
22 admissibility of evidence. He challenges the sufficiency for an evidentiary determination,
23 based upon the same evidence evaluated in the direct appeal. He is making the same
24 argument, but under a different name. *See Jeffries, supra*.

25

² Trial defense counsel's only objection regarding the confessions was that the petitioner invoked his right to counsel before questioning. 4 RP 184-186.

1 4. THE PETITIONER FAILS TO DEMONSTRATE A CONSTITUTIONAL
2 ERROR OR A FUNDAMENTAL DEFECT.

3 a. The petitioner has the burden of proof in a PRP.

4 To obtain relief in a personal restraint petition challenging a judgment and
5 sentence, the petitioner must show actual and substantial prejudice resulting from alleged
6 constitutional errors, or, for alleged nonconstitutional errors, a fundamental defect that
7 inherently results in a miscarriage of justice. *In re Personal Restraint of Cook*, 114 Wn.2d
8 802, 813, 792 P.2d 506 (1990).

9 b. The State adduced more than enough evidence to demonstrate
10 corpus delicti in order to permit admission of the petitioner's
11 confession.

12 The *corpus delicti* principle requires that the State prove that some crime actually
13 occurred, which for a homicide involves establishing (1) the fact of death, and (2) a causal
14 connection between the death and a criminal act. *State v. Aten*, 130 Wn.2d 640, 655, 927
15 P.2d 210 (1996). The purpose of the rule is to prevent a defendant from being unjustly
16 convicted based on an uncorroborated confession. *State v. Dow*, 168 Wn.2d 243, 249, 227
17 P.3d 1278 (2010).

18 The *corpus delicti* rule “tests the sufficiency or adequacy of evidence,” independent
19 of the defendant's confession, to corroborate a defendant's incriminating statement. *Dow*,
20 168 Wn.2d at 249. Under the *corpus delicti* rule, the State must present sufficient
21 independent evidence corroborating the defendant's confession to support the inference
22 that the crime with which the defendant has been charged has occurred, and the
23 “independent evidence ‘must be consistent with guilt and inconsistent with a[] hypothesis
24 of innocence.’”. *State v. Brockob*, 159 Wn.2d 311, 329, 150 P.3d 59 (2006)(quoting *Aten*,
25 130 Wn.2d at 660). “The independent evidence need not be sufficient to support a
 conviction, but it must provide *prima facie* corroboration of the crime described in the
 defendant's incriminating statement.” *Brockob*, at 328. In determining the sufficiency of

1 independent evidence under the *corpus delicti* rule, the appellate court assumes the truth of
2 the State's evidence and view all reasonable inferences therefrom in the light most
3 favorable to the State. *Aten*, 130 Wn.2d at 658, “Prima facie corroboration of a defendant's
4 incriminating statement exists if the independent evidence supports a “ ‘logical and
5 reasonable inference” of the facts sought to be proved.’ “ *Brockob*, at 328 (quoting *Aten*,
6 130 Wn.2d at 656).

7 In evaluating this evidence, it is worth bearing in mind that circumstantial and
8 direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99
9 (1980). Also, the appellate court defers to the fact-finder regarding resolution of conflicting
10 testimony, evaluation of witness credibility, and decisions regarding the persuasiveness
11 and the appropriate weight to be given the evidence. See e.g. *State v. Homan*, 181 Wn.2d
12 102, 106, 330 P.3d 182 (2014).

13 In the present case, as the petitioner points out in his brief, at 2-5, the facts and
14 evidence to be considered are the same as those presented at the trial.

15 On the afternoon of March 27, 2008, Eric Nevils left home with \$10,000, intending
16 to buy drugs for resale. 4 RP 228. He carried his money in rubber banded bundles of
17 \$1,000. 4 RP 210-211, 235. He went with friends Ernesto Watson and Joey Torres to
18 South Tacoma to meet with Albert Toomata, their anticipated drug supplier. 4 RP 228-229,
19 5 RP 422, 425. Mr. Toomata testified that he and a friend of his, Ruth Chisolm, were going
20 to introduce the victim to the petitioner so that Nevils could make the purchase of cocaine.
21 5 RP 420, 446.

22 Nevils got into Toomata's car. 5 RP 427. Toomata picked up the petitioner, and the
23 three drove to an apartment complex in South Tacoma. 5 RP 428, 433. The petitioner left
24 the car for 10 to 15 minutes. When he returned, he said they needed to go to Point
25 Defiance. 5 RP 437. Toomata took Nevils back to where Nevils had told Watson and

1 Torres to wait for him. 5 RP 440. Suspecting a robbery, Nevils went over to the car in
2 which Watson and Torres had been riding, covertly handed them \$6,000, and told them, "If
3 they are going to get me, they are not going to get me for everything." 4 RP 240. Nevils
4 returned to Toomata's car. Toomata took Nevils back to where the petitioner was waiting.
5 5 RP 443-445. Nevils got into the petitioner's car; an older model, large, Cadillac-type car,
6 beige in color, and left with him. *Id.*

7 Later that same day, several people living in the North Park Drive area of North
8 Tacoma heard gunshots in two volleys separated by a short pause. 4 RP 280-81, 300, 5 RP
9 325, 351, 7 RP 698, 706-7. Each of these neighbors testified that they heard the gunshots
10 just before 8:30 p.m. on March 27, 2008. 4 RP 281, 282, 300, 5 RP 348, 373, 7 RP 697-
11 98, 706.

12 Several of the residents in the neighborhood saw or heard a car leaving the area
13 shortly thereafter. One neighbor told police that the car he had seen was an older brown car
14 with a white top. Just after hearing the shots, three residents saw a car as it went up North
15 Park Drive away from the cul-de-sac. 4 RP 289, 5 RP 353-54, 377. Each of them
16 described the car to police. *Id.* One resident described the vehicle as a light colored, two-
17 tone Cadillac. 5 RP 353-54. Another testified that the car had a "long hood," and was
18 light tan. 5 RP 377. The witnesses did not see any person inside other than the driver. 5
19 RP 378.

20 Two men in the neighborhood went outside, looked around, heard groaning, and
21 found Nevils in a bushy area off the road. 5 RP 335. They, and other neighbors, called 911.
22 6 RP 640. By the time medics arrived, Nevils was dead. 1 RP 96-97.

23 Shortly after that, police dispatch advised officers of the shooting and provided a
24 description of the suspect car. Two patrol officers saw a car matching that description at
25 the Tacoma intersection of Sprague and South 19th Streets. 6 RP 640. They activated their

1 lights and pursued the car at about 70 miles per hour. The driver led the police on a chase
2 through Tacoma. 7 RP 721-727, 733, 739. The driver failed to stop, and police pursued it.
3 7 RP 721. The pursuing officers could not to see any other person in the car other than the
4 driver. 7 RP 738. When the car crashed into a dirt bank, one of the pursuit officers
5 positioned his patrol car next to the driver's side door of the vehicle. *Id.* The driver fled
6 out the passenger side of the car. 7 RP 727. No one else exited the car, and no one
7 remained inside. 4 RP 279. Officers quickly apprehended him.

8 Some of the North Park Drive residents were brought to the scene where the
9 petitioner had been arrested. These residents identified the car as the same one they had
10 seen after the shots were fired. 4 RP 291, 5 RP 357, 381. The car was a 1986 Buick Regal
11 with a white top and beige body. 9 RP 1093.

12 Police later matched the tread on the petitioner's left rear tire to tracks made at the
13 scene where the victim was found. 6 RP 681. In the vehicle police found cocaine, a scale,
14 and other drug paraphernalia. 6 RP 620, 7 RP 735. Police also recovered a cell phone
15 from the floor of the driver's side of the car. 6 RP 662.

16 At the time he was detained, defendant had \$1,500 in cash, and one ounce of
17 cocaine on his person. 7 RP 735. A forensic technician testified that the money found on
18 the defendant was folded and rubber banded in two bundles. 6 RP 547, 551, 554, 562.

19 At trial, the State produced a copy of a photograph from the cell phone found in
20 Richardson's car. 10 RP 1196. The photo showed Richardson holding two guns; the date
21 and time stamp on the photo were March 27, 2008, around 1:00 PM. 10 RP 1196, 1198. A
22 firearms forensic scientist assigned to the case testified that there were two guns used to
23 shoot the victim, as the bullets recovered from the victim's body were of two different
24 calibers, and had different rifling characteristics. 7 RP 871. Police officers did not recover
25

1 either gun or any shell casings at the scene. 5 RP 499. An investigating officer testified
2 that most likely the shots were fired from revolvers, which do not eject casings. 5 RP 499.

3 Nevils was shot seven times. 8 RP 905. The gunshot wounds included at least three
4 in the back 8 RP 928-929. He was shot three times while he was down on the ground. 8 RP
5 930. The medical examiner determined that the cause of death was gunshot wounds. 8 RP
6 936.

7 From this evidence, the court could conclude that 1) Nevils was dead, and 2) he
8 died by criminal means, i.e. homicide. The court could conclude that, where Nevils was
9 last seen driving off with the petitioner in the car that was at the scene where gunshots
10 were heard and Nevils was found, and that shortly thereafter the petitioner fled from police
11 while driving the same car, with Nevil's money in it; that the petitioner was involved in the
12 crime. From the evidence that Nevils was shot seven times, including three in the back, the
13 court could rule out accidental death or that Nevils committed suicide. The trial court could
14 make the "logical and reasonable" inference not only that the crime had occurred, but that
15 the petitioner committed it.

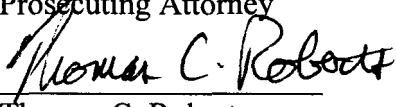
16 The evidence, even absent the petitioner's confession, was sufficient to prove his
17 guilt beyond a reasonable doubt, let alone the lesser level of probable cause, or the lowest
18 level of proof, which is applicable here, a *prima facie* showing. The trial court did not err.
19 Much less, the petitioner does not demonstrate actual prejudice from a constitutional error
20 or a fundamental defect resulting in a complete injustice.

1
2 D. CONCLUSION:

3 The petitioner argues the basis of an evidentiary decision to admit his confession.
4 Trial counsel did not object to the admission on this basis, likely because there was
5 overwhelming evidence for the court to find *corpus delicti*. The State respectfully requests
6 that this PRP be dismissed on procedural and substantive grounds.

7 DATED: May 10, 2016.

8 MARK LINDQUIST
9 Pierce County
10 Prosecuting Attorney

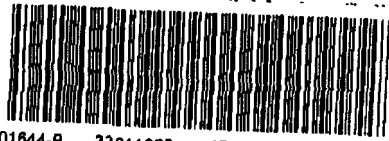
11 
12 Thomas C. Roberts
13 Deputy Prosecuting Attorney
14 WSB # 17442

15 Certificate of Service:

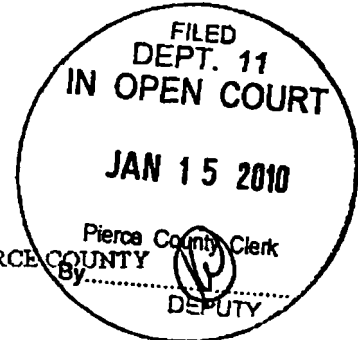
16 The undersigned certifies that on this day she delivered by U.S. mail or
17 ABC-LMI delivery to the petitioner true and correct copies of the document to
18 which this certificate is attached. This statement is certified to be true and
19 correct under penalty of perjury of the laws of the State of Washington. Signed
20 at Tacoma, Washington, on the date below

21 5.10.16 Therese Kar
22 Date Signature

APPENDIX “A”



08-1-01644-9 33611622 JDSWCD 01-21-10



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 08-1-01644-9

vs.

JAN 21 2010

JOHN ARTHUR RICHARDSON, III,

Defendant

WARRANT OF COMMITMENT

- 1) ☐ County Jail
 2) ☒ Dept. of Corrections
 3) ☐ Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[X] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 1-15-2010

By direction of the Honorable

John A. McCarthy
JUDGE
KEVIN STOCK John A. McCarthy

CLERK

By:

Kevin Stock
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

JAN 21 2010 *Kevin Stock* Deputy

STATE OF WASHINGTON

ss.

County of Pierce

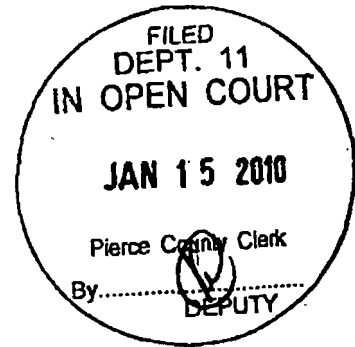
I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this

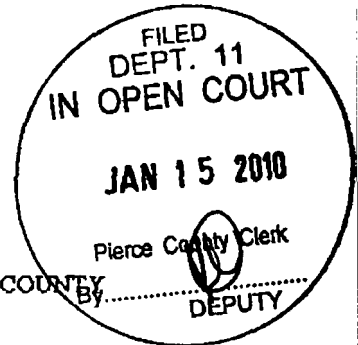
_____ day of _____, _____.

KEVIN STOCK, Clerk

By: _____ Deputy

mrp





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-01644-9

vs.

JOHN ARTHUR RICHARDSON, III

Defendant.

SID: WA17790565
 DOB: 05/29/1984

JUDGMENT AND SENTENCE (FJS)

☒ Prison ☐ RCW 9.94A.712 Prison Confinement
☐ Jail One Year or Less
☐ First-Time Offender
☐ Special Sexual Offender Sentencing Alternative
☐ Special Drug Offender Sentencing Alternative
☐ Breaking The Cycle (BTC)
☐ Clerk's Action Required, para 4.5
 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6
 and 5.8

I. HEARING

- 1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on 12/10/2009 by jury-verdict AS TO COUNT I; and the defendant was found guilty on 12/15/2009 by bench trial AS TO COUNT II of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	MURDER IN THE FIRST DEGREE (D1)	9A.32.030(1)(a)	FASE	03/27/2008	080871213
II	UNLAWFUL POSSESSION FIREARM SECOND DEGREE (GGG104)	9A.10.040(2)(a)(i)	NONE	03/27/2008	080871213

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

JUDGMENT AND SENTENCE (JS)
 (Felony) (7/2007) Page 1 of 10

Office of Prosecuting Attorney
 930 Tacoma Avenue S. Room 946
 Tacoma, Washington 98402-2171
 Telephone: (253) 798-7400

10-9-00805-6

as charged in the ORIGINAL Information

- ☒ A special verdict/finding for use of firearm was returned on Count I. RCW 9.94A.602, 9.94A.533.
☐ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	ATTEMPT ELUDE	07/01/1997	PIERCE, WA	05/02/1996	J	NV
2	UPOF 2	12/04/2000	PIERCE, WA	09/19/2000	J	NV
3	ESCAPE 1	01/17/2001	PIERCE, WA	01/12/2001	J	NV
4	ATTEMPT ELUDE	07/25/2001	PIERCE, WA	05/03/2001	J	NV
5	THEFT 1	08/04/2003	PIERCE, WA	04/05/2003	A	NV
6	ASSAULT 3	05/06/2005	PIERCE, WA	10/02/2004	A	NV
7	ASSAULT 3	07/20/2005	PIERCE, WA	04/14/2005	A	NV
8	ATTEMPT ELUDE	08/15/2006	PIERCE, WA	05/29/2006	A	NV
9	UPCS -AAA	06/08/2007	PIERCE, WA	01/20/2007	A	NV
10	DELIVERY TO INELIGIBLE PERSON	10/15/2007	PIERCE, WA	07/18/2007	A	NV

☒ The defendant committed a current offense while on community custody (adds one point to score). RCW 9.94A.525.

☐ The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancement)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancement)	MAXIMUM TERM
I	10	XV	411-548 months	60 MONTHS	471-608 months	LIFE/ \$50,000
II	10	III	51-60 months	NONE	51-60 months	5 YRS/ \$10,000

2.4 ☐ **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence:

☐ within ☐ below the standard range for Count(s) _____.

☐ above the standard range for Count(s) _____.

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defend's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

[] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

[] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [] attached [X] as follows: COUNT I: 608 MONTHS IN DOC; CREDIT FOR 655 DAYS SERVED AS OF 1/15/2010; 24-48 MONTHS OF COMMUNITY CUSTODY; STANDARD CONDITIONS; NO CONTACT WITH VICTIM'S FAMILY OR ANY WITNESSES; \$500 CVPA; \$200 COSTS; \$100 DNA FEE; DNA TESTING; RESTITUTION AS ORDERED BY THE COURT. COUNT II: 60 MONTHS IN DOC, CONCURRENT WITH COUNT I.

III. JUDGMENT

3.1 The defendant is GUILTY of the Courts and Charges listed in Paragraph 2.1.

3.2 [] The court DISMISSES Counts _____ [] The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN \$ _____ Restitution to: _____

\$ _____ Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

PUB \$ _____ Court-Appointed Attorney Fees and Defense Costs

FRC \$ 200.00 Criminal Filing Fee

FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 800.00 TOTAL

☒ The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

☐ shall be set by the prosecutor.

☒ is scheduled for 3-19-2010

☐ RESTITUTION. Order Attached

☐ The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

☒ All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$_____ per month commencing _____. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

☐ COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse

_____ (name of electronic monitoring agency) at _____
for the cost of pretrial electronic monitoring in the amount of \$_____.

4.2 ☒ **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

☐ **HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT**

The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

☐ Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

08-1-01644-9

4.4a BOND IS HEREBY EXONERATED

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

548 months on Count I 60 months on Count II
 A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

60 months on Count No I

Sentence enhancements in Count I shall run

[] concurrent [] consecutive to each other.

Sentence enhancements in Counts I shall be served

[X] flat time [] subject to earned good time credit

Actual number of months of total confinement ordered is: 608 months

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[X] The confinement time on Count(s) I contain(s) a mandatory minimum term of 240 MONTHS.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers: RCW 9.94A.589:

Confinement shall commence immediately unless otherwise set forth here:

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 655 days

4.6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

[] COMMUNITY CUSTODY is ordered as follows:

Count I for a range from: 24 to 48 Months;

Count _____ for a range from: _____ to _____ Months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offense not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories, or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,		
vii) Offense for delivery of a controlled substance to a minor, or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC, and (8) for sex offenses, submit to electronic monitoring if imposed by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

☐ The defendant shall not consume any alcohol.

☒ Defendant shall have no contact with: Victim's family or any witnesses

☐ Defendant shall remain ☐ within ☐ outside of a specified geographical boundary, to wit: _____

☐ Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8))

☐ The defendant shall participate in the following crime-related treatment or counseling services: _____

☐ The defendant shall undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse ☐ mental health ☐ anger management and fully comply with all recommended treatment.

☐ The defendant shall comply with the following crime-related prohibitions: _____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

☐ For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an

emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 ☐ **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**

☐ Defendant waives any right to be present at any restitution hearing (sign initials): _____

- 5.3 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.
- N/A
- 5.8 ☐ The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.
- 5.10 **OTHER:** _____

DONE in Open Court and in the presence of the defendant this date: 1-15-2018

JUDGE

Print name: John McCarty

Deputy Prosecuting Attorney

Print name: Edmund MurphyWSB # 14754

Attorney for Defendant

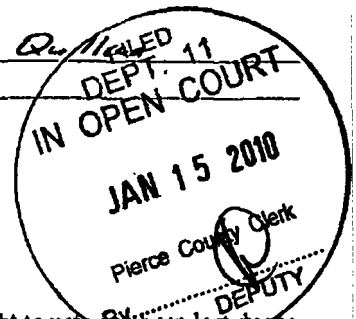
Print name: Robert QuilledWSB # 6836

Defendant

Print name: John A. Richardson III

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: _____



08-1-01644-9

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 08-1-01644-9

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of said County and State, by: _____, Deputy Clerk

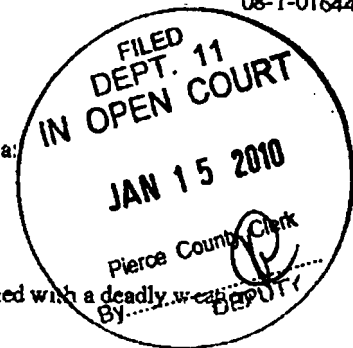
IDENTIFICATION OF COURT REPORTER**CATHY SCHAMU****COURT REPORTER**

Court Reporter



08-1-01644-9

APPENDIX "F"



The defendant having been sentenced to the Department of Corrections for a:

- ☐ sex offense
- ☒ serious violent offense
- ☐ assault in the second degree
- ☐ any crime where the defendant or an accomplice was armed with a deadly weapon
- ☐ any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

☐ (I) The offender shall remain within, or outside of, a specified geographical boundary: _____

☒ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: The victim's family and any witnesses

☐ (III) The offender shall participate in crime-related treatment or counseling services;

☐ (IV) The offender shall not consume alcohol; _____

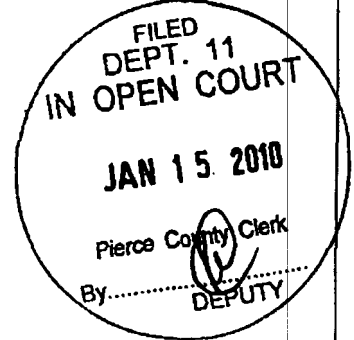
☐ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

☐ (VI) The offender shall comply with any crime-related prohibitions.

☐ (VII) Other: _____

IDENTIFICATION OF DEFENDANT

SID No. WA17790565 Date of Birth 05/29/1984
(If no SID take fingerprint card for State Patrol)
FBI No. 830941AC7 Local ID No. NONE
PCN No. 539412540 Other
Alias name, SSN, DOB:



Race: ☐ Asian/Pacific Islander ☒ Black/African-American ☐ Caucasian ☐ Hispanic ☒ Male
☐ Native American ☐ Other: ☒ Non-Hispanic ☐ Female

FINGERPRINTS

Left four fingers taken simultaneously		Left Thumb
Right Thumb	Right four fingers taken simultaneously	

I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Jan Lockman Dated: 1-15-10
DEFENDANT'S SIGNATURE: [Signature]
DEFENDANT'S ADDRESS: _____

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 10 day of May, 2016



Kevin Stock, Pierce County Clerk

By /S/Joseph Sonntag, Deputy.

Dated: May 10, 2016 11:12 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

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enter **SerialID: 7A881DE9-526D-4C38-ABEE30C0F90D1E96**.

This document contains 13 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “B”

December 01 2011 4:07 PM

KEVIN STOCK
COUNTY CLERK
NO: 08-1-01644-9

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOHN ARTHUR RICHARDSON, III,

Appellant.

No. 40249-1-II

MANDATE

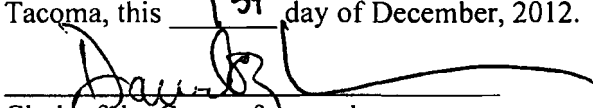
Pierce County Cause No.
08-1-01644-9

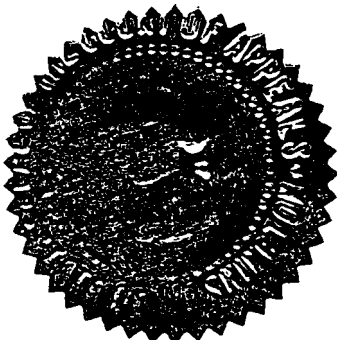
The State of Washington to: The Superior Court of the State of Washington
in and for Pierce County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on June 14, 2011 became the decision terminating review of this court of the above entitled case on November 1, 2011. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion. Costs and attorney fees have been awarded in the following amount:

Judgment Creditor: State of Washington, Pierce Co. \$0.00
Judgment Creditor: Appellate Indigent Defense Fund; \$7,993.70
Judgment Debtor; John Arthur Richardson, III; \$7,993.70

IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the seal of said Court at
Tacoma, this 13th day of December, 2012.


Clerk of the Court of Appeals,
State of Washington, Div. II



Page 2

Mandate 40249-1-II

Kathleen Proctor
Pierce County Prosecuting Atty Ofc
930 Tacoma Ave S Rm 946
Tacoma, WA, 98402-2171
PCpatcecf@co.pierce.wa.us

John Arthur Richardson, III
DOC#880524
WA State Penitentiary
1313 N 13th U-IMU T-S C J-11
Walla Walla, WA 99362

Indeterminate Sentence Review Board
PO Box 40907
Olympia, WA 98502

Rebecca Wold Bouchey
Nielsen, Broman & Koch, P.L.L.C.
1908 E Madison St
Seattle, WA, 98122-2842
BoucheyR@nwattorney.net

Hon. John A McCarthy
Pierce Co Superior Court Judge
930 Tacoma Ave South
Tacoma, WA 98402

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 10 day of May, 2016



Kevin Stock, Pierce County Clerk

By /S/Joseph Sonntag, Deputy.

Dated: May 10, 2016 11:12 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter **SerialID: A7A0A994-0DF0-4BAA-966DDB2F76791B4D**.

This document contains 2 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

FILED
COURT OF APPEALS
DIVISION II
JULY 24 2012 1:43 PM

KEVIN STOCK
COUNTY CLERK
NO: 08-1-01644-9

STATE OF WASHINGTON

BY  CLERK

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOHN ARTHUR RICHARDSON, III,

Appellant.

No. 40249-1-II

UNPUBLISHED OPINION

HUNT, P.J. — John Arthur Richardson, III, appeals his first degree murder jury conviction. He argues that the evidence of premeditation is insufficient to support the verdict. We affirm.

FACTS

I. MURDER

On the afternoon of March 27, 2008, Eric Nevils left home with \$10,000, intending to buy drugs for resale. His friends Ernesto Watson and Joey Torres drove with him to South Tacoma to meet with Albert Toomata, their anticipated drug supplier. Nevils got into Toomata's car, Toomata picked up John Richardson,¹ and the three drove to an apartment complex in South Tacoma. Richardson left the car for 10 to 15 minutes. When he returned, he said they needed to go to Point Defiance. Toomata took Nevils to where Nevils had told Watson and Torres to wait for him. Nevils went over to the car in which Watson and Torres had been riding, covertly

¹ In his testimony at trial, Toomata referred to Richardson as "June."

No. 40249-1-II

handed them \$6,000, and told them, "If they are going to get me, they are not going to get me for everything." 4 Verbatim Report of Proceedings (VRP) at 240. Nevils returned to Toomata's car. Toomata took Nevils back to where Richardson was waiting. Nevils got into Richardson's car and left with him at sunset. Toomata, Watson, and Torres did not see Nevils alive again.

At around 8:30 PM that same day, several people living in the North Park Drive area of Tacoma heard gunshots in two volleys. Several people saw or heard a car leaving the area shortly thereafter. One man went outside, looked around, heard groaning, and found Nevils in a bushy area off the road. He, and other neighbors, called 911. By the time medics arrived, Nevils was dead. One neighbor told police that the car he had seen was an older brown car with a white top.

Shortly after dispatch advised them of the shooting and provided a description of the suspect car, two patrol officers saw a car matching that description at the Tacoma intersection of Sprague and South 19th Streets. They activated their lights and pursued the car at about 70 miles per hour. When the car crashed into a dirt bank, the driver, Richardson, fled; officers quickly apprehended him. Some of the North Park Drive residents brought to the scene identified Richardson's car as the one that had left their area after the shooting of Nevils.

II. CONFESSIONS

Richardson was arrested. During a post-arrest interview at police headquarters, Richardson admitted having been present along with an unnamed "homeboy" during the murder. 9 VRP at 1070. But Richardson was nonresponsive about whether he himself had done the shooting. He indicated that nothing had been planned, but his "homeboy" and Nevils had gotten into a fight. 9 VRP at 1073. After the interview, a detective standing outside the interview room making transportation arrangements overheard Richardson talking to himself about his daughter;

No. 40249-1-II

Richardson began to cry and said, "I should have never shot. I should have never shot that gun."
10 VRP at 1192.

While incarcerated in the Pierce County jail, Richardson became friendly with inmate Larry Kleven, who had been convicted of a first degree murder committed in 1993 and sentenced to 416 months in prison.² Seeking legal advice, Richardson began talking to Kleven about Nevils' murder. They sometimes communicated by writing notes that jail porters delivered.³ Kleven wrote down questions, which Richardson then answered.

One of Kleven's questions was how Nevils could have been shot eight times if the shooter was using a revolver holding only five or six bullets; Richardson replied, "Because I had two gun revolver." 8 VRP at 828. Richardson also told Kleven that (1) he (Richardson) intended to kill Nevils; (2) he (Richardson) was a member of a "wrecking crew," a group that would steal back the drugs that Nevils had just sold, 8 VRP at 840; (3) Nevils was going to be a witness against his (Nevils') uncle in a pending case; (4) Nevils' uncle had hired this "[wrecking] crew" to kill Nevils to keep him from testifying, 8 VRP at 846; and (5) Richardson and the leader of the crew, Jimmy Wamsley,⁴ were the ones who had shot and killed Nevils.

² Kleven was in the jail, instead of prison, because he had successfully challenged the calculation of his offender score and was awaiting resentencing.

³ Kleven sent the notes to his attorney. The State produced these notes at trial.

⁴ Jimmy Wamsley was a friend, or at least an acquaintance, of Richardson. At trial, Kleven referred to Wamsley as "Woomsley."

No. 40249-1-II

III. PROCEDURE

The State charged Richardson with first degree murder, while armed with a firearm, and second degree unlawful firearm possession. At trial, the State produced a copy of a photograph from a cell phone found in Richardson's car. The photo showed Richardson holding two guns; the date and time stamp on the photo were March 27, 2008, around 1:00 PM. In addition to witness testimony about the facts set forth above, a forensic scientist who had examined available ballistic evidence testified that two different guns had been used in the shooting of Nevils.

The jury convicted Richardson of first degree murder. Several days later, the trial court found Richardson guilty of second degree unlawful possession of a firearm. Richardson appeals only his first degree murder conviction.

ANALYSIS

Richardson argues that the evidence is insufficient to show premeditation, a necessary element of first degree murder. We disagree.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Montgomery*, 163 Wn.2d 577, 586, 183 P.3d 267 (2008) (citing *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980)). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Turner*, 103 Wn. App. 515, 520, 13 P.3d 234 (2000) (quoting *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)). We consider circumstantial evidence as reliable as direct evidence. *Turner*, 103 Wn. App. at 520 (citing *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)). And we do not review credibility issues, which are the sole prerogative of the trier of

No. 40249-1-II

fact. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004) (citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)).

Premeditation is the “deliberate formation of and reflection upon the intent to take a human life.” *State v. Gregory*, 158 Wn.2d 759, 817, 147 P.3d 1201 (2006) (quoting *State v. Hoffman*, 116 Wn.2d 51, 82, 804 P.2d 577 (1991)); *State v. Robtoy*, 98 Wn.2d 30, 43, 653 P.2d 284 (1982) (citing *State v. Shirley*, 60 Wn.2d 277, 278, 373 P.2d 777 (1962)). It is “the mental process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short.” *State v. Bingham*, 105 Wn.2d 820, 823, 719 P.2d 109 (1986) (quoting *State v. Brooks*, 97 Wn.2d 873, 876, 651 P.2d 217 (1982)); *State v. Burkins*, 94 Wn. App. 677, 686, 973 P.2d 15 (1999) (quoting *State v. Pirtle*, 127 Wn.2d 628, 644, 904 P.2d 245 (1995)). The planned presence of a weapon used to facilitate a killing is adequate evidence to allow the issue of premeditation to go to the jury. *State v. Massey*, 60 Wn. App. 131, 145, 803 P.2d 340 (1990) (citing *Bingham*, 105 Wn.2d at 827). Premeditation can also be indicated by the choice of an isolated area or area where there is little traffic. See *State v. Gentry*, 125 Wn.2d 570, 599, 888 P.2d 1105 (1995); *State v. Giffing*, 45 Wn. App. 369, 375, 725 P.2d 445 (1986) (citing *State v. Lanning*, 5 Wn. App. 426, 438, 487 P.2d 785 (1971)).

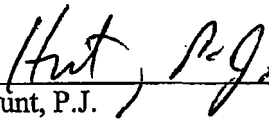
Richardson murdered Nevils in a heavily wooded area, at the end of a street that had very little traffic. Richardson went to this location for the proposed drug transaction; he, or an accomplice, brought two guns to the site. As Richardson later told Kleven, Nevils’ uncle had paid Richardson and Wamsley to kill Nevils, a clear indication that Nevils’ murder was planned

No. 40249-1-II

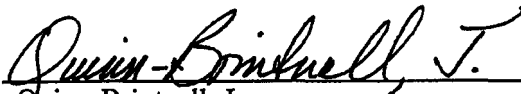
and deliberate.

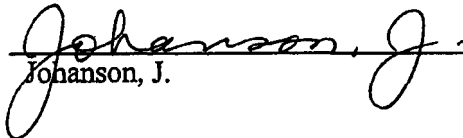
Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.


Hunt, P.J.

We concur:


Quinn-Brintnall, J.


Johanson, J.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 10 day of May, 2016



Kevin Stock, Pierce County Clerk

By /S/Joseph Sonntag, Deputy.

Dated: May 10, 2016 11:12 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter **SerialID: B69D8087-87B2-4B32-9AA76B1AE0BD4C2F**.

This document contains 6 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “C”



08-1-01644-9 19723239 CPPRP 12-21-12

Case Number: 08-1-01644-9 Date: May 10, 2016
 SerialID: 346C9442-066F-4474-A246E370837C14FC
 Certified By: Kevin Stock Pierce County Clerk, Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

FILED
 DIVISION II COUNTY CLERK'S OFFICE

A.M. DEC 21 2012 P.M.
 PIERCE COUNTY, WASHINGTON
 KEVIN STOCK, County Clerk
 BY _____ DEPUTY

FILED
 COURT OF APPEALS
 DIVISION II
 2012 DEC 14 AM 10:38
 STATE OF WASHINGTON
 BY _____ DEPUTY

In re the
 Personal Restraint Petition of

JOHN A. RICHARDSON, III,

Petitioner.

No 43135-1-II

ORDER DISMISSING PETITION

08-1-01644-9

John A. Richardson, III seeks relief from personal restraint imposed following his conviction of murder in the first degree and unlawful possession of a firearm in the second degree. Richardson contends that (1) several errors occurred when a jail informant testified against him, (2) the prosecuting attorney committed misconduct during closing argument; and (3) he received ineffective assistance from both trial and appellate counsel.

To be entitled to relief, a petitioner must show either constitutional error that resulted in actual and substantial prejudice or nonconstitutional error that resulted in a complete miscarriage of justice. *In re Pers Restraint of Cook*, 114 Wn.2d 802, 810-13 (1990). In addition, a personal restraint petition must include as grounds for the requested relief a statement of the facts upon which the claim of unlawful restraint is based and the evidence available to support the factual allegations. RAP 16.7(a)(2)(i); *In re Pers Restraint of Williams*, 111 Wn.2d 353, 365 (1988). When the petition relies on

43135-1-II

conclusory allegations, this court must decline to determine its validity. *Cook*, 114

Wn 2d at 813-14.

INFORMANT

Richardson makes several complaints about the informant's testimony. He contends that the informant's evidence was tailored and uncorroborated, that discovery concerning the informant was withheld, that the informant testified falsely that he received no benefit from his testimony, that the informant was working as an agent for law enforcement, and that the trial court should have given an "informant" instruction.

Richardson provides no evidence for these claims other than a few citations to the record that do not support them. There is no evidence that discovery was withheld, and the informant's testimony was corroborated by notes he and Richardson exchanged and by the testimony of other witnesses. Defense counsel thoroughly cross examined the informant about the sentence reduction he received before he testified and about whether that reduction was related to his testimony against Richardson. The informant denied testifying against Richardson because of any deal he had made, and he asserted that the State had no leverage over him since he had already been sentenced. There is nothing in the record to refute this assertion.

In arguing that the trial court erred in failing to give an informant instruction, Richardson cites *United States v. Luck*, 611 F.3d 183, 186-87 (2010), where the Fourth Circuit discussed the following instruction:

The testimony of an informer who provides evidence against a defendant for pay, or for immunity from punishment, or for personal advantage or vindication, must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether the informer's testimony has been affected by interest or by prejudice against a defendant.

43135-1-II

Richardson did not request such an instruction, however, and no error can be predicated on the trial court's failure to give an instruction where no request for such an instruction was ever made *State v Kroll*, 87 Wn.2d 829, 843 (1976)

PROSECUTORIAL MISCONDUCT

Richardson also contends that the prosecuting attorney committed misconduct during closing argument by vouching for the detectives who testified about non-recorded statements he allegedly made. But the prosecutor left it to the jury to decide whether the detectives testified accurately: "You are the sole judges of credibility, and it will be up to you to decide whether or not these three detectives were fabricating their testimony." RP 1356. On rebuttal, the prosecutor added that "there is nothing to suggest that the detectives who testified regarding the statements of the defendant in this case are anything less than absolutely credible." RP 1366-67 The prosecutor did not express a personal opinion about the credibility of these witnesses and did not commit misconduct. *See State v. Warren*, 165 Wn.2d 17, 30 (2008) (error arises only if prosecutor clearly expresses personal opinion as to credibility of witness instead of arguing inference from the evidence), *cert. denied*, 129 S. Ct. 2007 (2009).

Richardson also contends that the prosecutor committed misconduct during closing argument by telling the jurors to hold some exhibits up to the light. The prosecutor actually told the jurors to line up the exhibits and look at them. We see no misconduct in this instruction

Richardson adds that further misconduct occurred during closing argument when the prosecutor improperly cited an "excited utterance" Richardson made after being

43135-1-II

advised of his *Miranda*¹ rights. Following a CrR 3.5 hearing, the trial court admitted a spontaneous and incriminatory statement Richardson made after receiving his *Miranda* warnings. The prosecutor did not commit misconduct by referring to this evidence during closing argument.

INEFFECTIVE ASSISTANCE OF COUNSEL

Richardson also claims that he received ineffective assistance of counsel at trial and on appeal. To prove that trial counsel was ineffective, a petitioner must show that counsel's performance was deficient and that the deficiency was prejudicial. *In re Pers Restraint of Monschke*, 160 Wn. App. 479, 490-92 (2010). To prove that appellate counsel was ineffective, a petitioner must show that the issues counsel failed to raise had merit and that this failure was prejudicial. *In re Pers Restraint of Maxwell*, 133 Wn.2d 332, 344 (1997).

Richardson contends that trial counsel failed to effectively argue that his police interrogation continued even after he had invoked his right to counsel. Richardson's attorney did argue that a coercive atmosphere rendered Richardson's spontaneous statements inadmissible, but the trial court disagreed. Counsel's lack of success does not demonstrate ineffective assistance of counsel. *See State v White*, 81 Wn.2d 223, 225 (1972) (competency of counsel is not demonstrated by result).

Richardson further asserts that his trial counsel was deficient in failing to request lesser-included instructions on first and second degree manslaughter. In considering Richardson's direct appeal, we held that the evidence of premeditation was sufficient to support his first degree murder conviction, and Richardson does not describe the

¹ *Miranda v Arizona*, 384 U.S. 436 (1966).

43135-1-II

evidence showing that he acted with either recklessness or criminal negligence. No. 40249-1-II; *see* RCW 9A.32.060(1)(a); RCW 9A 32.070. Consequently, Richardson does not show that a request for lesser included instructions on manslaughter was appropriate. *See State v Warden*, 133 Wn.2d 559, 563 (1997) (first and second degree manslaughter may be lesser included offenses of premeditated murder and instructions on these offenses should be given to jury when the facts support them).

Richardson also contends that his trial attorney was deficient in allowing the informant to testify, but he does not establish that any motion to exclude this testimony would have succeeded. *See State v McFarland*, 127 Wn.2d 322, 337 n.4 (1995) (counsel's failure to make motion does not demonstrate ineffective assistance unless defendant can show that trial court probably would have granted motion). Richardson also faults his attorney for failing to request an informant instruction.

Such an instruction is appropriate only where an informant provides evidence against a defendant for some personal advantage as well as pay or immunity. *United States v. Monzon-Valenzuela*, 186 F.3d 1181, 1183 (9th Cir. 1999). Furthermore, an informant instruction is warranted only where the informant's testimony supplies the only strong evidence of guilt. *United States v Holmes*, 229 F.3d 782, 788 (9th Cir. 2000). As discussed above, defense counsel questioned the informant about any benefit he might have received as a result of his testimony and failed to produce any evidence thereof. In addition, other strong evidence of guilt included Richardson's own statements, forensic evidence that two guns were used to kill the victim, a photograph from a cell phone found in Richardson's car showed Richardson holding two guns on the afternoon of the shooting, and the fact that he was caught fleeing the vehicle seen leaving the area of the

43135-1-II

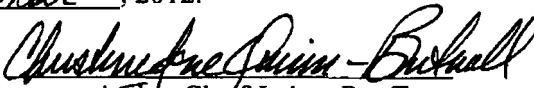
shooting directly afterward We see no probability that the trial court would have granted a request for an informant instruction, particularly where the court had already instructed the jury to consider the interest, bias, or prejudice of any witness in assessing the testimony, and where this instruction allowed defense counsel to highlight any problems he saw with the informant's testimony.

Because Richardson fails to show that the prosecuting attorney committed misconduct during closing argument, he fails to show that his attorney was deficient in failing to object to that argument. Richardson's claim of ineffective assistance of appellate counsel also fails because he does not show any meritorious issue that his attorney failed to raise on direct appeal.

Consequently, Richardson does not show any error that entitles him to relief. Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b), and the petitioner's request for the appointment of counsel is denied.

DATED this 14th day of December, 2012.


Acting Chief Judge, Pro Tem

cc: John A. Richardson, III
Pierce County Clerk ✓
County Cause No. 08-1-01644-9
Mark Lindquist, Pierce County Prosecuting Attorney
Melody M. Crick, Deputy Prosecuting Attorney

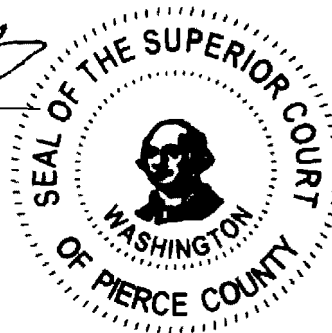
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 10 day of May, 2016



Kevin Stock, Pierce County Clerk

By /S/Joseph Sonntag, Deputy.

Dated: May 10, 2016 11:12 AM



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APPENDIX “D”

Case Number: 08-1-01644-9 Date: May 10, 2016

SerialID: 40C43FFE-298B-42E6-A7C6E5A82F69731F

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-01644-9 34679749 NTM 07-20-10

FILED
IN COUNTY CLERK'S OFFICE

A.M. JUL 20 2010 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTYJOHN ARTHUR RICHARDSON, III,
Plaintiff/Petitioner

vs.

STATE OF WASHINGTON
Defendant(s), et. Al

NO. 08-1- 01644-9

NOTICE OF MOTION DOCKET
NOTED:TO: PIERCE COUNTY OFFICE OF THE CLERK OF COURT
930 TACOMA AVE. SO. ROOM 110

TACOMA, WASHINGTON 98402-2177

PLEASE TAKE NOTICE, that the attached: Motion
TO MODIFY OR CORRECT SENTENCE AND JUDGMENTshall be presented to the Court without oral argument on the
22nd day of JULY, 2010, or at the
Court's earliest convenience.

Respectfully Submitted this 14th day of JULY, 2010.

SUBSCRIBED AND SWORN to before me this

30th day of June, 2010

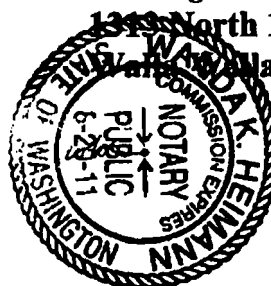
Wanda K. Heumann

Notary Public in and for the State of
Washington, Residing in Walla Walla,

Washington. My commission expires;

8/20/11

Print Name John Richardson # 880524

Plaintiff/Petitioner Pro-Se
Washington State Penitentiary
1319 North 13th Avenue
Walla Walla, WA 99362

Case Number: 08-1-01644-9 Date: May 10, 2016
 SerialID: 40C43FFE-298B-42E6-A7C6E5A82F69731F
 Certified By: Kevin Stock Pierce County Clerk, Washington

SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF PIERCE

State of Washington,)	NO.
Plaintiff/Respondent)	MOTION TO MODIFY OR
)	CORRECT SENTENCE
vs)	AND JUDGMENT
JOHN ARTHUR RICHARDSON, III,)	
<u>Defendant/Respondent</u>)	

FACTS

I. That the Defendant, JOHN ARTHUR RICHARDSON, III, in the above-entitled case.

II. That the Defendant, appeared before Judge JOHN M. McCARTHY, the State being represented by EDMUND MURPHY WSB#6836 of PIERCE County Prosecutors Office, and Defense Attorney ROBERT QUILLIAN WSB# 6836 representing the Defendant.

III. That the Defendant plead/went to trial and received a sentence of 471
-606 MONTHS ON COUNT 1 AND 51-60 MONTHS ON COUNT 2

GROUND

Pursuant to Rule 7.8, Superior Court Rules of Criminal Procedure, and the court imposed sentence. The Defendant only seeks modification of sentence, not retrial. Error in sentencing Court happened when:

1). A sentence which is ambiguous with respect to time and manner in which to be served;

2). The sentencing Judge must be very clear in pronouncement about whether the sentence will run concurrent or consecutive: U.S. v. Preston, 634 F.2d. 1285, 1294 (1980); also see RCW 9.94A.400; U.S. v. Nass, 755 F.2d. 1133, 1136 (5th Cir. 1985)

Case Number: 08-1-01644-9 Date: May 10, 2016

SerialID: 40C43FFE-298B-42E6-A7C6E5A82F69731F

Certified By: Kevin Stock Pierce County Clerk, Washington

3). OtherSEE MEMORANDUM IN SUPPORT OF 7.8 MOTION ATTACHED.**RELIEF**

WHEREFORE, PETITIONER RESPECTFULLY PRAY THAT THIS COURT GRANT
THE MOTION TO MODIFY OR CORRECT SENTENCE AND JUDGMENT, PURSUANT TO
BLAKELY Vs. WASHINGTON, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed 2d 403

(2004).

I, _____, swear under the laws of perjury of the State of
Washington that the foregoing is true and correct.

Signature

Printed Name

Washington State Penitentiary
1313 North 13th Avenue
Walla Walla, WA 99362

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 10 day of May, 2016



Kevin Stock, Pierce County Clerk

By /S/Joseph Sonntag, Deputy.

Dated: May 10, 2016 11:12 AM



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PIERCE COUNTY PROSECUTOR

May 10, 2016 - 1:16 PM

Transmittal Letter

Document Uploaded: 1-prp2-484447-Response.pdf

Case Name: PRP of Richardson

Court of Appeals Case Number: 48444-7

Is this a Personal Restraint Petition? ☒ Yes ☐ No

The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): ____

Personal Restraint Petition (PRP)

☒ Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: ____

Comments:

No Comments were entered.

Sender Name: Therese M Kahn - Email: tnichol@co.pierce.wa.us

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mitch@mitchharrisonlaw.com